

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NORTHWEST SHEET METAL WORKERS
WELFARE FUND; NORTHWEST SHEET
METAL WORKERS PENSION FUND; and
NORTHWEST SHEET METAL WORKERS
SUPPLEMENTAL PENSION TRUST,

Plaintiffs,

v.

SPOKANE TIN & SHEET IRON WORKS, INC.,

Defendant.

No.

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

JURISDICTION AND VENUE

1. This is an action brought pursuant to Section 301 of the National Labor Relations Act, as amended (hereafter "the Act"), 29 U.S.C. § 185, and Section 502 of the Employee Retirement Income Security Act of 1974 (hereafter "ERISA"), 29 U.S.C. § 1132. Jurisdiction and venue are conferred upon this Court by 29 U.S.C. § 185(a), 1132(a), (e) and (f).

PARTIES

2. Plaintiff NORTHWEST SHEET METAL WORKERS WELFARE FUND (hereafter "Welfare Trust") is a labor-management health and welfare trust fund created pursuant to the provisions of Section 302(c) of the Act, 29 U.S.C. § 186(c), and authorized to

1 sue in its own name by Section 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1). Plaintiff Welfare
2 Fund is administered in the State of Washington.

3 3. Plaintiff NORTHWEST SHEET METAL WORKERS PENSION FUND
4 (hereafter “Pension Trust”) is a labor-management pension trust fund created pursuant to the
5 provisions of Section 302(c) of the Act, 29 U.S.C. § 186(c), and authorized to sue in its own
6 name by Section 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1). Plaintiff Pension Fund is
7 administered in the State of Washington.

8 4. Plaintiff NORTHWEST SHEET METAL WORKERS SUPPLEMENTAL
9 PENSION TRUST (hereafter “Supplemental Pension Trust”) is a labor-management pension
10 trust fund created pursuant to the provisions of Section 302(c) of the Act, 29 U.S.C. § 186(c),
11 and authorized to sue in its own name by Section 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1).
12 Plaintiff Pension Fund is administered in the State of Washington.

13 5. Defendant SPOKANE TIN & SHEET IRON WORKS, INC. (“Spokane Tin”) is
14 a sheet metal contractor and is a party to a collective bargaining agreement with Sheet Metal
15 Workers Local 55. That industry affects commerce within the meaning of the Act. Spokane
16 Tin has employed or does employ persons represented by Local 55. Spokane Tin’s principal
17 place of business is 3807 E Ferry Ave, Spokane, WA 99202.

18 CLAIM FOR RELIEF

19 6. Plaintiffs incorporate by reference as though set forth fully herein paragraphs 1
20 through 5 above.

21 7. The collective bargaining agreement between Defendant and Local 55 was in effect
22 at all times material hereto. By that agreement Defendant Spokane Tin became obligated to make
23 monthly contributions to plaintiffs Welfare, Pension, and Supplemental Pension, as well as other
24 funds, on behalf of employees represented by Local 55. By that agreement, Defendant Spokane
25 Tin also became obligated to adhere to the Trust Agreements for plaintiff Trusts, as well as
26 policies lawfully adopted by the Trustees of Plaintiff trusts.

1 8. Defendant has also agreed to and has received money from its Local 55 employees,
2 as part of the employees' after-tax wages, which Defendant is and was obligated on a monthly
3 basis to deposit into each employee's account, or submit to Local 55 as part of each employee's
4 dues obligation. Defendant holds such money in trust.

5 9. Payments due to the various plaintiff and non-plaintiff Trusts, and the amounts of
6 employees' after-tax wages held in trust by Defendant, are calculated pursuant to a contribution
7 reporting form required to be prepared monthly by Defendant and submitted to the plaintiff Trusts.

8 10. On or about July 17, 2013, the Trustees duly adopted a policy imposing a monthly
9 convenience fee for all employers who failed to submit their monthly contribution reporting forms
10 through the Electronic Contribution Reporting (ECR) website. The policy provided that for the
11 period of September 2013 - November 2013, the monthly convenience fee ("ECR fee") was \$100;
12 for the period of December 2013 to February 2014 the ECR fee was \$200; and for March 2014 and
13 thereafter the ECR fee was \$500. The purpose of the policy was to ensure the efficient
14 administration of Trust contributions by incentivizing employers to remit contribution reports
15 electronically and to recoup the administrative costs associated with manually entering reports that
16 are not submitted electronically. Pursuant to that policy, Defendant's would be charged a \$500
17 per month ECR fee for each month when Defendant did not submit its contribution report
18 electronically.

19 11. The contribution reporting form and accompanying payment are due at the
20 Welfare office and address within fifteen (15) days after the end of each calendar month.

21 12. In March 2018, April 2018, May 2018 and June 2018, Defendant failed to use the
22 designated website to electronically submit completed contribution reporting forms. As such,
23 plaintiff Trusts imposed a \$500 ECR fee for each month – March 2018, April 2018, May 2018,
24 and June 2018 – that Defendant failed to submit its contribution report electronically. Despite
25 its obligation under the collective bargaining, trust agreements, and policies adopted by the Trusts
26 to pay these ECR fees, and despite multiple demands for payment by plaintiffs, Defendant has

1 refused to pay these fees. As a result, Defendant owes outstanding ECR fees, in violation of its
2 obligations under the trust agreements and policies adopted thereunder, and the collective
3 bargaining agreement.

4 13. Unless ordered by this Court, Defendant will continue to refuse to pay to the
5 Plaintiffs the ECR fees due them. As a result, Plaintiffs will be irreparably damaged.

6 14. In addition to the unpaid ECR fees, Plaintiffs are entitled to the following pursuant
7 to Section 502(g) of ERISA, 29 U.S.C. § 1132(g), and Section 301 of the Act, 29 U.S.C. § 185,
8 as amended:

9 (a) Interest on the unpaid ECR fees;

10 (b) Reasonable attorneys' fees and the costs of this action.

11 A copy of this complaint will be served upon the Secretary of Labor and the Secretary of
12 the Treasury by certified mail as required by ERISA, 29 U.S.C. § 1132(h).

13 WHEREFORE, plaintiffs demand judgment against the Defendant:

14 1. Obliging Defendant to pay to plaintiffs the full amount of all ECR fees owing,
15 with the proper amount of interest as established by Section 502(g) of ERISA, 29 U.S.C. §
16 1132(g), the Trust Agreements, and the collective bargaining agreement;

17 2. Restraining and enjoining Defendant, its officers, agents, servants, attorneys, and
18 all persons acting on its behalf or in conjunction with it from: (a) refusing to pay ECR fees to
19 plaintiffs; and (b) refusing to pay to plaintiffs all monies, including interest, due from March 2018
20 to current, and for all periods thereafter for which Defendant is obligated to make timely payments
21 under the terms of the collective bargaining agreement;

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3 || 4. Granting plaintiffs such further and other relief as may be just and proper.

4 DATED this 28th day of August, 2018.

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